fact that such evidence and the affidavit of Ismail bin Hassan were read as I have described in the re-hearing, there is nothing on the record to show that the depositions of the witnesses and the affidavit of the said Ismail bin Hassan were tendered in evidence. It was on this evidence that the President made his decision, and the question is whether this evidence which was admitted by the President, albeit with the agreement of Counsel, was admissible.

In argument before me both Counsel submitted in defence of the course agreed to by them and followed by the President that, although the Subordinate Courts Rules, 1950 do not provide for the reading of evidence taken in another cause in any other case, Order 35 Rule 2 of the Rules of the Supreme Court (which provides for evidence taken in another cause or matter being read *inter alia* in any other case) may be held as applying to a Sessions Court by virtue of the provisions of Order I Rule 2 Sub-rule (1) of the Subordinate Courts Rules.

There appears to be some confusion about this argument. I accept without cavil the proposition that by virtue of Order I Rule 2 Sub-rule (1) of the Subordinate Courts Rules deficiencies in practice or procedure in those rules can be supplied from any other appropriate source so as to do substantial justice between the parties, but the question here is not a matter of procedure but the admissibility of evidence, and Rules and Orders which only profess to deal with procedure cannot nullify the Evidence Ordinance, the provisions of which remain unaffected thereby.

In my opinion, the answer to this question is to be found in section 33 of the Evidence Ordinance, 1950 That section reads:—

"33. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court considers unreasonable:

Provided —

(a) that the proceeding was between the same parties or their representatives in interest;

(b) that the adverse party in the first proceeding had the right and opportunity to cross-examine;

(c) that the questions in issue were substantially the same in the first as in the second proceeding."

The general rule clearly is that all evidence at a trial must be given *viva voce* and the witnesses must be subject to cross-examination in the usual way before the trial Judge, and depositions are admissible only after proof that the parties who made them cannot themselves be produced. In the present case, the parties and their witnesses were before the President, and it is therefore manifest that the reception in evidence of their depositions in a former trial ought not to have been allowed. In my view, furthermore, where there has been a violation of a rule of evidence, it makes no difference that such violation has been consented to by the parties or their Counsel.

Section 167 of the Evidence Ordinance provides:—

"167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it appears to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Without the evidence which was improperly received by the President, there was absolutely no evidence to justify his decision.

This being so, this appeal must be allowed. The case must be sent back to the Sessions Court for re-hearing before another President.

It is to be regretted that further expense will have to be incurred before this litigation can be determined, but I am satisfied that the President was not to blame, inasmuch as the Counsel for both parties not only proposed but agreed between themselves to the course that he took, a course intended, I have no doubt, to save time and possible expense. In the matter of costs, therefore, I think it right to restore the parties to the position that they were in prior to 2nd April, 1953. I, therefore, order no costs of this appeal and that each party do pay his own costs of the re-hearing on the 2nd April, 1953 in the Court below. The costs in the Court below and of the appeal before Abbott, J., to abide the determination of the suit and to follow the decision of the re-hearing.

Appeal allowed.

Solicitor for the appellant: *C. S. Jayaswal.*

Solicitors for the respondents: *W. H. Sault & Co.*

TAN AH SEAH v. TEO KAI MIN & ORS.

[O. C. J. (Spenser Wilkinson, J.) December 14, 1953]

[Penang — Civil Suit No. 35 of 1953]

Landlord and tenant — Determination of head tenancy — Sub-tenants the "statutory tenants" — Standard rent — Interpretation of — ss. 8(3), 13(1)(j) and 14(2) of the Control of Rent Ordinance, 1948.

In October, 1950, the plaintiff obtained an order for possession against the principal tenant, and that order having been served upon the defendants (the sub-tenants) on the following month, they thereupon became statutory tenants of the plaintiff under section 14(2) of the

Control of Rent Ordinance, 1948. It was not until December 1952 that the defendants applied to the Rent Board and had their respective rents reduced from $50, $20 and $20 to $30, $10 and $10 accordingly.

The plaintiff contended that the rent payable by the defendants as his tenants during the period November 21st, 1950 to December 18th, 1952 amounted to $1,743.84 and the defendants maintained that the correct amount was $918.75.

Held: the landlord (plaintiff) having stepped into the shoes of the principal tenant, was entitled to collect rents at the rate of $50, $20 and $20 respectively until they were altered by the Board.

Case referred to:—

(1) *Lian Teck Chew v. Kiew Leng & Co.* (1952) M.L.J. 135.

CIVIL SUIT.

Eusoffe Abdoolcader for the plaintiff.

Lim Keng Kooi for the defendants.

Spenser Wilkinson, J. : —The facts in this case were not in dispute and no evidence was called on either side, the only evidence before me being an agreed bundle of documents. The issue between the parties is as to the amount of rent payable by the three defendants to the plaintiff as his tenants during the period 21st November, 1950 to the 18th December, 1952, the plaintiff claiming a total sum of $1,743.84 for this period and the defendants maintaining that the correct amount is $918.75.

The premises in question are No. 9, Mesjid Road, Penang. The plaintiff is the proprietor of these premises and the three defendants are now his statutory tenants. Up till 21st November, 1950 one Kang Heap Yeah was the principal tenant of the plaintiff and the three defendants were sub-tenants. When the premises were first sub-let to the three defendants their respective portions of the house were let to them at rents of $50, $20 and $20 per month respectively. The rent paid by the principal tenant to the landlord was only $36.75 per month, but the principal tenant paid the Municipal charges.

Some time in 1950 the landlord took steps to eject the principal tenant, the main ground of the application being, apparently, that the principal tenant had left the premises. Having got the necessary permission from the Rent Board he sued the principal tenant for ejectment and an order for possession in favour of the plaintiff was made on the 3rd October, 1950.

The judgment in that case omitted to state whether the sub-tenants were bound by the order and upon further proceedings being taken by the sub-tenants it was declared that the order for possession was not enforceable against them. The order for possession having been served upon the sub-tenants on the 21st November, 1950 the three sub-tenants thereupon become statutory tenants of the plaintiff, under sub-section (2) of section 14 of the Control of Rent Ordinance, 1948.

In March, 1950, about the time when the plaintiff was applying to the Rent Board for permission to eject the principal tenant, the sub-tenants made applications to the Rent Board to fix the rent of their respective parts of the premises. For reasons which are not before me these applications were adjourned and did not come on for hearing until 1952. The result was that it was not until 18th December, 1952 that the applications came on for hearing, and the Rent Board fixed the rents of the three parts of the premises at $30, $10 and $10 per month respectively.

As between the sub-tenants and the principal tenant there had been some small increases in rent from the time of the first letting up to the material time, but no question arises with regard to these increases, as the claim of the plaintiff is based on the rents paid by the sub-tenants when the sub-tenancies first commenced. The plaintiff's contention is that these rents are the standard rents of those parts of the premises.

The contention of the defendants is that the permitted rent of the whole premises is $36.75 per month, being $35 per month standard rent plus a permitted increase of $1.75 and that the landlord cannot recover from the tenant more than the total of this permitted rent.

This issue raises an exceedingly difficult question on the construction of the Control of Rent Ordinance, 1948 and I propose first to discuss the question purely on the wording of the Ordinance before considering such meagre authority as exists on this subject.

I think the most important passage of the Ordinance for the purposes of this case is the definition of "premises", the relevant part of which reads as follows :—

> " 'premises' means any dwelling house etc..... and any other building in which persons are employed or work and any part of any premises let or sub-let separately.....

Another important definition is that of "standard rent" which reads as follows :—

> " 'standard rent' means —
>
> (a) if the rent has been fixed by the Board prior to the commencement of this Ordinance, the rent so fixed;
>
> (b) if the rent has not been fixed by the Board prior to the commencement of this Ordinance, the rent of the premises as at the twenty-fifth day of September, 1940; or, in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the twenty-fifth day of September, 1940."

The word "premises" having been defined by the Ordinance, paragraph (b) of the definition of "standard rent" must, I think, in respect of a sub-tenancy be read as follows :—

" 'standard rent' means —

(b) if the rent has not been fixed by the Board prior to the commencement of this Ordinance, the rent of any part of the premises sub-let separately as at the twenty-fifth day of September, 1940; or, in the case of any part of the premises sub-let separately which were then unlet..... the rent at which the part of the premises so sub-let separately were first sub-let after the twenty-fifth day of September, 1940."

I have set out this definition at length because the vital question in the present case is whether there can be two standard rents in respect of the same building at the same time. It appears to me that the wording of the definition of "standard rent" when read together with the definition of "premises" makes it clear that the standard rent of a part of a house sub-let may be assessed differently from the standard rent of the whole, because, if there has been no order of the Board, the first letting of each part may have occurred at different times and at different rates. If this be so it follows that if at one time the whole house is let as one and later the whole or nearly the whole is let in parts or *vice versa* the total of the standard rents of the parts may be greater or less than the standard rent of the building as a whole.

This brings me, however, to the next relevant portion of the Ordinance, which is paragraph (j) of section 13(1) and reads as follows :—

"(j) where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents (exclusive of any payment by the tenant for Municipal or Town Board services) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant."

It was argued on behalf of the defendants that the Legislature frowns upon a tenant who receives more than three quarters of the rent payable to the landlord and, therefore, the conception of the standard rents of sub-tenants totalling more than the rent payable to the landlord is contrary to the spirit of the Ordinance, and inconsistent with it for the purposes of section 16 which defines the rights of statutory tenants.

I can, however, find nothing in the Ordinance which, in terms, prohibits a tenant from charging his sub-tenants more in total than he is paying to his landlord. The risk that the principal tenant undergoes if he does this is that he may be ejected. Such a tenant is, moreover, subject to the further risk that the sub-tenants may apply to the Rent Board to have their rent fixed, and this appears to me to be the primary remedy provided by the Ordinance to the sub-tenants. This remedy is provided by sub-section (3) of section 8, the relevant part of which reads as follows :—

"8(3) Any landlord or tenant or other person interested may apply to the Board for an order fixing the rent in respect of the tenancy of premises of which he is landlord or tenant or in which he is interested...."

It was contended on behalf of the defendants that if the Ordinance was construed in favour of the plaintiff in this case the result would be that an unscrupulous landord could put in a nominee as principal tenant to charge exorbitant rates against the sub-tenants and then, having ejected the principal tenant, he would continue to recover these exorbitant rents from the sub-tenants. Upon this argument I have three comments. In the first place there are dangers in construing an Ordinance with an eye to its possible results rather than by its wording. If the Legislature has passed a law which has anomalous results the remedy is an amendment of the law; for if the law is plain it is the duty of the Courts to enforce it regardless of its results. Secondly, even if the defendants' argument on this point is sound, I think the only result would be that the Courts (acting on the principle that no person can take advantage of his own wrong) might refuse relief to a landlord who had been proved to have acted in such a manner. There is, however, no evidence whatsoever before me of any such conduct in the present case. Thirdly, as I have already pointed out, the sub-tenants have a remedy provided for them by the Ordinance which appears to me to cover this very point, so that the situation envisaged by Counsel for the defendants does not seem to me to be likely to arise.

I think it is of importance in this case to bear in mind that the sub-tenants were aware of their remedy and had, in fact, made applications to have their rents fixed, but they did not choose to pursue that remedy until some time in 1952. Had they proceeded with their applications forthwith I think there is little doubt that the Rent Board would have fixed the rent at some figure approximately the same as that which was fixed in December, 1952, in which case they would certainly have had to pay more than the total of $36.75, to which they now seek to limit their liability.

Whilst there is no doubt that the Control of Rent Ordinance is designed to protect tenants it must also be borne in mind that in so doing it cuts down to a considerable degree the common law rights of the landlord. I see no reason to construe the Ordinance in such a manner as to restrict the landlord's rights further than clearly appears to be the intention of the Legislature extracted from the wording of the Ordinance.

There is very little authority on this question and the only case cited to me was the Singapore case of *Lian Teck Chew v. Kiew Leng & Co.*[1] decided in March, 1952 upon the provisions of the Singapore Control of Rent Ordinance, 1947. In that case the rent of the whole of certain premises had been fixed in 1946 at $150 per month and in 1949 the applicant became the tenant of the first floor only at $250 per month. Upon his application to reduce the rent the Rent Control Board reluctantly concluded that it could not reduce the applicant's rent because $250 was the standard rent under the definition contained in the Ordinance. The matter having come before the High Court the learned Judge expressed the opinion that there could not be two standard rents, one of which, for only a part of the building, was far greater than that for the whole building and he remitted the case to the Board for a lower rent to be assessed.

Mr. Abdoolcader for the plaintiff sought to distinguish the Singapore case from the case now before me on two main grounds. In the first place he pointed out that the Singapore Ordinance of 1947 upon which that case was decided is not entirely the same as our Ordinance of 1948. In particular the reference in the judgment to that part of the Singapore Ordinance which refers to substantial justice being done does not appear in our Ordinance. Secondly, in the Singapore case the rent of the whole premises had been fixed by the Board whereas in the present case no part of the rent has at any time been fixed by the Board. It was also pointed out that there is nothing in the report of the Singapore case to indicate that the attention of the learned Judge was particularly called to the definition of "premises" which in the Singapore Ordinance of 1947 is substantially the same as the definition of "premises" which I have set out earlier in this judgment.

There is a further point to be observed in regard to the Singapore decision referred to. The Board in that case clearly came to its decision on the basis that it had no power to alter a standard rent; and the case appears to have been argued before the High Court on the assumption that this was correct. I should have thought, however, that under the provisions of section 8(1)(b) of our Ordinance (which is word for word the same as section 9(1)(b) of the Singapore Ordinance of 1947) the Board could have reduced the rent of the relevant portion of the premises notwithstanding that the rent being charged at the time was the standard rent. The wording of this paragraph appears to me to be very clear. It reads as follows:—

> "8(1) The Board shall have and may exercise the following powers, namely —
>
> (b) to make orders fixing such rent at a figure equal to, below or above the current rent as to the Board may seem just and proper; and, from time to time, to review, vary or set aside any order made by it, as provided in section 9 of this Ordinance."

These are very wide words and appear to me to give to the Board the fullest possible discretion to fix whatever rent may be just in all the circumstances; and I see no reason to place any limitation on these words in respect of those cases where the current rent happens to be the same as the standard rent. I am confirmed in this view by the wording of section 3(1) which makes the rent fixed by the Board the primary measure of the permissible rent; it is only if the Board has not fixed the rent that the standard rent comes into the picture at all. I do not have to decide this point but it seems to me that had it been taken before the learned Judge in the case now under discussion his decision, though no doubt it would have been in the result the same, might have rested on different grounds.

In view of the distinctions and considerations above mentioned I do not think that the case now before me is quite on all fours with the Singapore case which I, therefore, do not feel bound in this case to follow.

My conclusion is that from the wording of the definition of "premises" contained in the Control of Rent Ordinance, 1948 it is impossible to avoid the conclusion that there may in certain circumstances be two standard rents. I cannot, therefore, avoid the further conclusion that the standard rents of these "premises" — that is to say, the three separate parts of the house let to the three defendants — were $50, $20 and $20 per month respectively and that the landlord having stepped into the shoes of the principal tenant was entitled to collect rents at these rates until they were altered by the Board.

For these reasons there will be judgment for the plaintiff for the amount claimed. I will hear argument as to costs.

Judgment for the plaintiff.

Solicitor for the plaintiff: *Ong Huck Lim.*
Solicitor for the defendants: *Lim Kheng Kooi.*

NIPPON YUSEN KAISHA v. W. A. BALCH.

[C. A. (Mathew, C.J. (F.M.) Whitton and Buttrose, JJ.) December 16, 1953]

[Singapore — Civil Appeal No. 24 of 1953]

Negligence — Doctrine of common employment.

This was an appeal against the judgment of Brown, J. reported in (1953) M.L.J. 184. The facts of the case are fully stated in the judgment of the learned trial Judge.